

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Bright House Networks LLC	)	
	)	CSR 6926-E
Petition for Determination of Effective	)	
Competition in unincorporated Manatee County,	)	
FL (CUIDs FL0067, FL0863, FL0483) and	)	
Palmetto, FL (CUID FL0357)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 27, 2007**

**Released: March 2, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Bright House Networks LLC ("Bright House Networks") has filed with the Commission a petition pursuant to Sections 76.7 and 76.905(b)(2) and 76.907 of the Commission's rules seeking a finding of effective competition in unincorporated Manatee County, Florida and Palmetto, Florida.<sup>1</sup> Bright House Networks alleges that its cable system serving the captioned areas are subject to effective competition pursuant to Section 623(l)(1)(b) of the Communications Act of 1934, as amended ("Communications Act")<sup>2</sup> and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). No opposition to the petition was filed. Finding that Bright House Networks is subject to effective competition in the captioned areas, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup> Based on the record in this proceeding, Bright House Networks has met this burden.

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<sup>1</sup>See 47 C.F.R. §§ 76.7(a)(1) & 76.905(b)(2).

<sup>2</sup>See 47 U.S.C. §§ 543(l)(1)(B) & 543(a)(4).

<sup>3</sup>47 C.F.R. § 76.906.

<sup>4</sup>47 C.F.R. § 76.905.

<sup>5</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>6</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>7</sup> Bright House Networks has provided evidence of DIRECTV and DISH’s comprehensive Internet websites and toll-free phone numbers for ordering DBS service.<sup>8</sup> The two DBS providers’ subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.<sup>9</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the franchise areas are DBS subscribers, we conclude that the population of the franchise areas may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>10</sup> We find that Bright House Networks has demonstrated that unincorporated Manatee County and Palmetto, Florida are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise areas. Bright House Networks also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the captioned area, that there exists no regulatory, technical, or other impediments to households within the franchise areas taking the services of the DBS providers, and that potential subscribers in the franchise areas have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>11</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Bright House Networks asserts that it is the largest MVPD in the franchise areas.<sup>12</sup> Bright House Networks sought to determine the competing provider penetration in the franchise areas by using a five-digit zip code allocation formula, using data from the Satellite Broadcasting and Communications

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<sup>6</sup>47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup>*See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>8</sup>*See* Bright House Networks Petition at 4-5.

<sup>9</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11, at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

<sup>10</sup>*See* 47 C.F.R. § 76.905(g); *see also* Bright House Networks Petition at 6-7.

<sup>11</sup>*See* Bright House Networks Petition at 3-4.

<sup>12</sup>*Id.* at 8.

Association (“SBCA”), to calculate the DBS firms’ subscribership in each franchise area.<sup>13</sup> The SBCA reports showed that there are an aggregate of 23,862 DBS subscribers in Manatee County and 3200 in Palmetto.<sup>14</sup> Bright House Networks multiplied these figures with the derived allocation percentages to calculate the total number of subscribers allocated to the franchise areas.<sup>15</sup> It then divided that number by the total number of franchise households from 2000 U.S. Census data.<sup>16</sup> Based on this method, Bright House Networks showed that the competing provider penetration rate in Manatee County is 15.6 percent and in Palmetto is 19.55 percent.<sup>17</sup> We find that Bright House Networks has demonstrated that the number of households subscribing to programming services offered by providers, other than the largest MVPD, exceeds 15 percent of the households in the franchise areas. Therefore, the second prong of the competing provider test is satisfied.

6. Bright House Networks satisfied the first prong of the competing provider test, by demonstrating that the DBS providers offer comparable programming to at least 50 percent of the franchise areas. In addition, Bright House Networks has satisfied the second part of the competing provider test by establishing that the DBS providers serve at least 15 percent of the franchise areas. Based on the foregoing, we conclude that Bright House Networks has submitted sufficient evidence demonstrating that its cable systems serving the franchise areas are subject to “competing provider” effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Bright House Networks LLC **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications of unincorporated Manatee County, Florida and Palmetto, Florida to regulate basic cable service rates **ARE REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>13</sup> *Id.* at 8-9; Exhibit D.

<sup>14</sup> Exhibit D.

<sup>15</sup> Exhibit E. The allocation percentages were derived by dividing the total number of franchise households (based on 2000 U.S. Census data) by the total number of five-digit zip code households (based on data from Media Business Corporation). Exhibits B, C & E. The allocation percentage for Manatee County was 51% and for Palmetto was 27%. Thus, the total direct-to-home subscribers allocated to the franchise area for Manatee County was 12,183.51 and for Palmetto was 869.44.

<sup>16</sup> Exhibit E. The total number of franchise households for Manatee County was 78,115 and for Palmetto was 4,448.

<sup>17</sup> *Id.* (Manatee County =  $12183.51/78115=15.60\%$ ; Palmetto =  $869.44/4448 = 19.55\%$ ).

<sup>18</sup> 47 C.F.R. § 0.283.